

BRIEF IN SUPPORT OF PETITION**Opinions Below**

The opinions of the insular District Court of San Juan are not officially reported [Case No. 714, No. 3770, C.C.A., "Order Declaring Non-existence of Tax Lien", R. 18; Case No. 715, No. 3771, C.C.A., R. 1-12]. The Circuit Court of Appeals handed down a single opinion covering both cases [Case No. 714, No. 3770, C.C.A., R. 23-26; Case No. 715, No. 3771, C.C.A., R. 17-20]. It appears in 131 F. (2nd) 151 (*Advance Sheets*).

JURISDICTION

The jurisdiction of the Court is invoked under Section 240(a) of the Judicial Code of the United States as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered, in each case, on November 6, 1942 [Case No. 714, No. 3770, C.C.A., R. 27. Case No. 715, No. 3771, C.C.A., R. 21]. The time within which to apply for writs of certiorari in these cases to this Court was extended two days by order of Mr. Justice Frankfurter until and including February 8, 1943. [Case No. 714, No. 3770, C.C.A., R. 28; Case No. 715, No. 3771, C.C.A., R. 22].

QUESTION PRESENTED

The single question here presented is stated in the Petition ("Question Presented", *ante*, pp. 3-5).

STATUTES

The statutes involved are indicated in the Petition (*ante*, pp. 3-5, 5-7), and pertinent parts are set out in Appendix I (*infra*, pp. 27-31). Those of primary importance here are Articles 168 and 218 of the insular Mortgage Law, and Sections 1823 and 1824 of the Civil Code, together with Section 315 of the Political Code,—[all taken in connection with

Sections 295 and 298 of the Political Code directing the assessment of real property for tax purposes on January 15 in each year (Appendix I, *infra*, pp. 28-29) and other sections of the Political Code (Appendix I, *infra*, pp. 28-30].

The provisions of Articles 168 and 218 of the Mortgage Law, Sections 1823 and 1824 of the Civil Code, and Section 315 of the Political Code, upon which the cases chiefly turn, are the following [*English text; Spanish text in Appendix I, infra*, pp. 30-31].

MORTGAGE LAW, Arts. 168 and 218 (Appendix I, *infra*, p. 27):

“Art. 168. A statutory mortgage is established:

“5 (*As amended by act of March 14, 1907, p. 330*). In favor of The People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the *three annual assessments and the current unpaid annual assessment* of the taxes which burden same.” (*Italics supplied*)

“Art. 218. (*As amended by act of Mar. 14, 1907, p. 330*). The People of Porto Rico and the corresponding municipality shall be preferred to any other creditor in the recovery of taxes of the *last three annual assessments and the current unpaid annual assessment* which burden the personal property.” (*Italics supplied*)

CIVIL CODE [Edition of 1930; Appendix I, *infra*, pp. 27-28]:

“Section 1823.—(*Section 1824, Civil Code of 1902, as amended by act of March 10, 1910, page 124, and act of March 9, 1911, page 155*.) With regard to certain real property and rights on realty of the debtor, the following shall have preference:

1. Credits in favor of The People of Porto Rico or of the corresponding municipality with regard to the property of the taxpayers for the amounts of the *last three annual assessments and the current annual assessment, unpaid*, of the taxes which burden the same. (*Italics supplied*)

"Section 1824.—(*Section 1825, Civil Code of 1902, as amended by act of March 10, 1910, page 125, and act of March 9, 1911, page 155.*) With regard to all other personal and real property of the debtor, preference shall be given to:

"1. Credits in favor of The People of Porto Rico and of the corresponding municipality for the taxes of the last three annual assessments due and the current unpaid annual assessment which are not covered by paragraph one of the preceding section." (*Italics supplied*)

POLITICAL CODE [approved March 1, 1902; Appendix I, *infra*, p. 29]:

"Sec. 315. (*As amended by act of Mar. 14, 1907, at p. 338.*) That it shall be the duty of the assessor in making the assessment * * *. *The tax that is assessed for the current fiscal year, and for the three prior fiscal years, against each piece or parcel of real property, * * * shall constitute the first lien thereon, * * *.*" (*Italics supplied*).

STATEMENT

A statement of these cases indicating how the question here arises is in the Petition ("Statement", *ante*, pp. 2-3).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated in the Petition under the headings "Statement" (last two paragraphs), "Question Presented", "Position of The People of Puerto Rico", and "Reasons for Granting the Writs" (*ante*, pp. 3, 3-5, 5-7, and 7-9).

SUMMARY OF ARGUMENT

The argument is summarized under the heading "Position of The People of Puerto Rico" (*ante*, pp. 5-7), together with what is said under the next succeeding headings here, "Decision of the District Court" (*infra*, pp. 13-14) and "Opinion of the Circuit Court of Appeals

(*infra*, pp. 14-17), and under the next following headings, "Prior Decisions of the Supreme Court of Puerto Rico" (*infra*, pp. 17-19) and "Opinion of the Attorney General of Puerto Rico" (*infra*, pp. 20-21).

DECISION OF THE DISTRICT COURT

The grounds of the decisions of the District Court are the same in both cases (No. 714, No. 3770, C.C.A., R. 18; No. 715, No. 3771, C.C.A., R. 10-12). No formal opinion of the District Court appears in either record, but No. 715 (No. 3771, C.C.A.) although begun later in point of time was reached earlier for decision by the District Court, and in its judgment order, November 24, 1941 ["Order for Delivery of Money", R. 10-12 in that case, which was the District Court's "No. 1827"], that court says (R. 11):

"Whereas, besides the liens for inheritance taxes, *** the only tax lien existing in Puerto Rico by express statutory provision is *limited by Section 315 of the Political Code, 1823 of the Civil Code and 168 of the Mortgage Law* to the taxes assessed for the current fiscal year and for the three prior fiscal years." (*Italics supplied*)

And the decision of the other case [Case No. 714, No. 3770, C.C.A., the District Court's "No. 1393", "Order Declaring Non-existence of Tax Lien", January 22, 1942, R. 18], simply follows that first decision, reciting that it is placed upon the same grounds, *viz*:

"that prior to July 1 of each year no lien attaches respecting the taxes assessed on the preceding January 15 for the fiscal year commencing on July 1, and that until such lien attaches, the condemnees, as owners of record of the properties so assessed, are personally liable to The People of Puerto Rico for such taxes, but no compensation can be awarded to the latter for its personal credit against the condemnees since the same does not constitute a compensable property interest within a condemnation proceeding."

*It will be observed that the District Court does not discuss, in any way, the apparent differences between the Mortgage Law and the Civil Code on the one hand and Section 315 of the Political Code on the other hand; indeed, —as is indicated by the italicized portions above, of the quotation from its order of November 24, 1941 (R. 11, *supra*) in Case No. 715 (No. 3771, C.C.A.; *ante*, p. 13), it apparently did not even observe that any such differences existed; or at any rate wholly ignored them.*

OPINION OF THE CIRCUIT COURT OF APPEALS

The gist of the opinion of the Circuit Court of Appeals is (Case No. 714, No. 3770, C.C.A., R. 26; Case No. 715, No. 3771, C.C.A., R. 20; 131 F. (2d) at p. 152) that "it is contended" on behalf of the People of Puerto Rico:

"that certain provisions of the Mortgage Law and of the Civil Code not only conflict with, but also control, the above provisions of the Political Code and give a lien for taxes immediately upon the making of the assessment on January 15 of each year. We do not agree.

The statutory provisions relied upon, (§ 168 (5) and §218 of the Mortgage Law, Rev. Stats. and Codes of P.R. § 6852 and § 6902); and Civil Code, Ed. of 1930, §§ 1823, 1824) all deal with the priority of tax liens over liens created by mortgages, judgments, etc., not to the time when liens for taxes arise, and furthermore they give priority only to liens for taxes which are unpaid, and admittedly there were no unpaid taxes due on the respective parcels of property at the time when they were condemned. We fail to see the pertinence of any of the statutory provisions last cited. The most that can be said is that they are ambiguous, but they are susceptible of a construction harmonizing with the admittedly unambiguous provisions of the Political Code. It is not lightly to be assumed that the legislature blundered into enacting flatly contradictory provisions in the Political and Civil Codes."

ERRORS OF THE CIRCUIT COURT OF APPEALS. The foregoing quotation indicates that the opinion misunderstands, or fails completely to analyze, the pertinent provisions of the Mortgage Law and of the Civil Code, in at least two salient respects. (SEE ALSO *infra*, "Point III-B", pp. 25-26).

First. The opinion says as above quoted that, "The statutory provisions relied upon" (Articles 168 and 218 of the Mortgage Law and Sections 1823 and 1824 of the Civil Code):

"all deal with the priority of tax liens over liens created by mortgages, judgments, etc., not to the time when liens for taxes arise". (Italics supplied)

*This apparently wholly ignores the express provision of Article 168 of the Mortgage Law, directly creating the lien, [and not dealing at all with any question of relative priority]. That section provides (ante, p. 11; Appendix I, *infra*, p. 27):*

"Art. 168. A statutory mortgage is established:

*"1. In favor of married women * * *.*

"5. (As amended by act of March 14, 1907, p. 330). In favor of the People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the three annual assessments and the current unpaid annual assessment of the taxes which burden same". (Italics supplied)

Article 218 of the Mortgage Law and Sections 1823 and 1824 of the Civil Code deal with relative priorities of the liens, but Section 168 of the Mortgage Law constitutes the direct *creation* of the tax lien.¹⁴

¹⁴ And it is the Mortgage Law which the Supreme Court of Puerto Rico has said it was the purpose of the Political Code to do "nothing more than reproduce"; not change in any way. *Romero v. Willoughby*, followed in *Fajardo Sugar Co. v. Domenech, supra* (ante, pp. 5-6 and *infra*, p. 18,—where, also, it is pointed out that it is the Mortgage Law (Art. 168) which "grants" the "legal mortgage in favor of the State" (*quoted, infra*, p. 18).

Second. The Circuit Court of Appeals opinion also says, as above quoted, of these provisions of the Mortgage Law and the Civil Code, that,

“furthermore they give priority only to liens for *taxes* which are unpaid, and admittedly there were no unpaid taxes *due* on the respective parcels of property at the time when they were condemned.” (*Italics supplied*)

If by the word “taxes”¹⁵ in the first clause of this statement the opinion intends to designate only taxes already “due”, as appears to be indicated by the observation made in the second clause of the statement that there were no “unpaid taxes due” at the time of the institution of the condemnation proceedings, then there appears to be here a plain misunderstanding of the provisions, both of the Mortgage Law and of the Civil Code, each of which alike speaks, —not of “taxes” nor of “taxes due”, but on the contrary, —alike in the Spanish and the English text,¹⁶—of “the current unpaid annual assessment”,¹⁷—which certainly does not necessarily mean only “taxes due” and already payable, but plainly includes as well taxes which have been completely assessed on January 15, and for which the liability of the landowner on that date has become definitely fixed, but which may not yet be actually payable.

Third. From the foregoing it appears clear that the opinion of the Circuit Court of Appeals was in error in saying that “the most that can be said” is that these provisions of the Mortgage Law and of the Civil Code “are ambiguous”, or that they are “susceptible of a construction

¹⁵ Italicized by us, above.

¹⁶ *Ante*, pp. 11-12; *infra*, Appendix I, pp. 27-28, 30-31. Spanish, “de las tres últimas anualidades, y la corriente no pagada”.

¹⁷ Mortgage Law, Arts. 168 and 218; Civil Code, Secs. 1823 and 1824; all alike in uniform phraseology; Appendix I, *infra*, pp. 27-28; 30-31.

harmonizing" with that of Section 315 of the Political Code as it was construed by the District Court, or that the settled administrative construction of these provisions by the insular authorities for which we are here contending is in any way "lightly" assuming that the legislature "blundered" into enacting contradictory provisions.

To the contrary it is plain that the provisions of the Mortgage Law and of the Civil Code are perfectly plain and unambiguous. They represent the ancient Spanish law and likewise the most recent expression of the legislative will (*infra*, Point II-B, p. 23). The Political Code, coming from another source, enacted in 1902 and last amended in 1907, while intended to harmonize with them and, as the insular Supreme Court has said, to do "nothing more than reproduce" the provisions of the Mortgage Law, apparently did not quite do so; and in the respect here in question does not quite harmonize with them, as the Legislature undoubtedly intended that it should. Such a discrepancy in welding together statutes and legal concepts coming from different sources is wholly understandable.

But in any event, *it is the Mortgage Law which "establishes" the lien* [Art. 168], and controls as to the date it arises, regardless of any question as to when it becomes a "first lien" under the wording of Section 315 of the Political Code.

PRIOR DECISIONS OF THE SUPREME COURT OF PUERTO RICO

The Supreme Court of Puerto Rico appears not directly to have decided at what point of time the tax lien for real property taxes arises,—whether upon the making of the assessment or not until July 1st when the first installment of the tax falls due. It has, however, held that, immediately upon the making of the assessment, the person who was the landowner on the tax assessment date, January 15, becomes personally liable to the insular government for the taxes, and so remains until they are paid, regardless of any

changes in the ownership of the land. *Asociación de Maestros v. Sancho Bonet, Treasurer*, 54 Dec. P. R. [Spanish edition; not yet in English] 536, 541-544; *Roig v. Sancho Bonet, Treasurer*, 54 Dec. P. R. [Spanish edition] 649, 650-651.¹⁸

With reference to the relationship to each other of the above quoted provisions of the Political Code and of the Mortgage Law and the Civil Code, the Supreme Court of Puerto Rico has said in *Fajardo Sugar Co. v. Domenech, Treasurer*, 45 P. R. Rep. [English edition] 539, 544, quoting and following its own earlier decision in *Estate of Romero v. Willoughby, Treasurer*, 10 P. R. Rep. 71, 75-76:

*"In this the Political Code does nothing more than reproduce substantially the provisions of articles 168 and 218 of the Mortgage Law in force in this Island, the first of which grants an implied legal mortgage in favor of the State, * * * *; and the second—that is, article 218—provides that the State, province or towns shall be preferred to any other creditor in the recovery of one year's taxes on the realty. These provisions are also reproduced by section 1824 of the new Civil Code, which agrees in every respect with article 1923 of the former Code, which provides, with regard to determined real property and property rights of the debtor, that credits in favor of The People of Porto Rico, with regard to the property of taxpayers, for the amounts of the last annual assessments, due and not paid, which burden the same, shall be preferred in the first place."* (*Italics supplied*)

As to general principles concerning the date upon which the tax lien arises, the Supreme Court of Puerto Rico has said in the case of *Asociación de Maestros vs. Sancho Bonet, Treasurer, supra*, 54 Dec. P. R. 536, 541-542. [Translation ours; Appendix II, *infra*, pp. 36-37]:

"Article 298 of the Political Code provides that real property is to be assessed 'to the person who is either

¹⁸ English translations in Appendix II, *infra*, pp. 32-41.

the owner or in possession thereof on the fifteenth day of January.'

"Although we have not been able to find any specific statutory provision nor any local decision concerning the moment at which for the first time there arises in this jurisdiction the responsibility for the payment of a tax on real property, the uniform decisions of various states of the Union have expressed a very definite criterion. *The date on which the assessment of property for tax purposes becomes complete appears to be accepted by the majority as determining such responsibility.*" [Italics supplied]

"The necessity of fixing a date, prior to the physical moment of collection, from which the state may be able definitely to calculate its income for the following fiscal year, is obvious. It takes time to prepare the assessment rolls for the properties, the schedules, and the tax receipts. The taxable status of the property should remain unaltered after a fixed point of time anterior to the date for the payment of the tax, in order that the Treasurer may have a fixed basis upon which to float his bonds, to increase or reduce the taxes, etc.

"That is, we think, the fundamental reason for the rule. Besides that, the collection would be uncertain and impracticable if the state had to allow exemptions, following changes to new purchasers or to distribute the taxes among subsequent owners during the same year.

"In cases of sales to purchasers who in themselves are exempt from the payment of taxes it has resulted that the owner of the property at the time of the assessment remains personally responsible for the payment of the taxes imposed on the property. *The Attorney General of Porto Rico at one time handed down an opinion to that effect.*" [Italics supplied] "14 Ops. Attorneys General [of Puerto Rico] 448.¹⁹ See also *Glosser Lumber Co., Inc. v. Adams County*, 163 So. 541; *Buckout v. City of New York*, 82 App. Div. 218 (N. Y.);

¹⁹ "Taxation—Real property—Personal liability for tax on real property", Opinion No. 77, January 21, 1930; Attorney General Beverley, 14 Ops. Atty. Gen. of Porto Rico, p. 448,—quoted under the next heading here, *infra*, pp. 20-21.

Prytania St. Market Co. v. City of New Orleans, 110 La. 835, 34 So. 797; *Wood v. McCook Waterworks Co. et al.*, 149 N. W. 417; *New Orleans Bank and Trust Co. v. City of New Orleans*, 147 So. 42, 176 La. 946; *City of Oakland v. Whipple*, 39 Cal. 112, and 61 *Corpus Juris* 171, Par. 126."

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO

With reference to the date when the tax lien arises a former Attorney General of Puerto Rico, the Honorable James R. Beverley, in the opinion²⁰ to which reference was made by the insular Supreme Court in the case last quoted, appears to have *assumed without question that the tax lien arose immediately upon the completion of the making of the assessment*. In dealing with the question whether an owner of property, to whom it was assessed for taxation as of January 15, and who had sold it the following March 31st, remained personally liable to the insular government for the taxes,—and in holding that he did so remain personally liable,—Attorney General Beverley said (14 Ops. Atty. Gen. of P. R., *supra*, 448, 450):

"In reply, I advise you that when taxes have been assessed to the proper person in accordance with section 298 of the Political Code, they become an obligation on the part of the owner of the property to the Government, and while not a debt in the ordinary sense of the term they constitute a debt in the broader meaning of the word. Cooley on Taxation, 4th Ed., Vol. 1, p. 88 ff.; *State v. Georgia Co.*, 17 S. E. 10, 19 L.R.A. 485; section 1056, Civil Code of P.R.

"The obligation to pay the tax is a duty which may be enforced upon the owner of the property. In case of taxes on real property this obligation is secured by a first lien in accordance with section 315 of the Political Code of Porto Rico. *The fact that the real property has*

²⁰ Opinion of January 21, 1930, cited in the next preceding footnote.

been transferred after the lien attaches²¹ has no effect either upon the liability of the former owner or upon the state of the lien, unless the statutes so provide; the debt remains on the individual or firm to which the property was properly assessed, *and the lien also remains against the property* regardless of the number of times it may have been transferred. *The Treasurer of Porto Rico*, therefore, in a situation of that kind *may proceed to collect the taxes either from the former owner to whom the taxes were assessed or may proceed against the security and sell the same.*" (Italics supplied)

ARGUMENT

[RECAPITULATION]

POINT I

The tax lien attaches immediately upon the making of the assessment.

This is the understanding of the Insular Government, although the federal District Court held the contrary in these cases. The uncertainty arises from a variation in the wording in the statutes, the difference between the wording of the Mortgage Law and the Civil Code on the one hand, and that of the Political Code on the other hand.

A.—The question is whether the tax lien attaches to "the current unpaid annual assessment" (Mortgage Law; Civil Code), or to "the tax that is assessed for the current fiscal year" (Political Code).²²

B.—Manifestly, if the text of the Political Code were to be considered as though it stood wholly by itself, and without reference to the other statutes, and were to be considered as the governing statute, then, plainly, it would have to be conceded that the decision of the District Court in these cases is right; because the wording of Section 315 of the

²¹ In that case on March 31; that is to say, after the making of the assessment of January 15, but *before July 1* when the tax became payable.

Political Code, both in English and in Spanish²² is that the

"The tax that is assessed for the current fiscal year, and for the three prior fiscal years" (Italics supplied),

is what "*shall constitute the first lien;*" and, plainly, under the insular statutes, on January 15, the assessment date in each year, the then "*current fiscal year*" is the one which had begun on the preceding July 1 and is running until June 30 of the same year in which the assessment is made; so that, taken literally, this wording of Section 315 of the Political Code,—*if this were the statute that "established" the lien*,—would mean that from the time the assessment is made on January 15, until the expiration of the "*then current fiscal year*" on the following June 30, the only "*first lien*" of the government would be that for the taxes assessed a year previously for the "*current fiscal year*" which had begun the prior July 1,—and for the "*three prior fiscal years*". In other words, the "*first lien*" would not be given for the taxes assessed in January, 1941, until after that fiscal year had expired and the new fiscal year had begun the following July.

There would thus be this gap between making the assessment on January 15 and the beginning of the following fiscal year on July 1, during which there would be no existing lien for the taxes assessed on the then current assessment. And that is the decision of the District Court in these cases.

C.—On the other hand, the wording of the Mortgage Law, —*which is the statute which "establishes" the lien* (Art. 168),—and of the Civil Code, which agree with each other, equally plainly gives the lien *immediately upon the making of the assessment* on January 15 of each year, giving it for the "*last three annual assessments due and the current un-*

²² Spanish text of the pertinent parts of Articles 168 and 218 of the Mortgage Law, and of Sections 1823 and 1824 of the Civil Code, and also of Section 315 of the Political Code, are in Appendix I, (*infra*, pp. 30-31).

paid annual assessment'' (Civil Code; Sec. 1824, *supra*).²³

D.—The question is, then, of resolving this apparent difference between the provisions of the Political Code on the one hand, and of the Mortgage Law and the Civil Code on the other hand.²⁴

POINT II

In resolving this question several elements are to be considered.

A.—The Mortgage Law is the statute which directly "established" [Art. 168] the lien, in the first instance.

B.—In so far as there is a difference between the different codes, *the Civil Code is the latest expression of the legislative will.*

Section 315 of the Political Code, in its present form, speaks as from March 14, 1907, the date when it was last amended, as quoted in the appendix (*infra*, pp. 29, 31), by the Legislature's act of that date; whereas Sections 1823 and 1824 of the Civil Code speak from the dates, three and four years later than that, when that code was amended by the Acts of March 10, 1910 and March 9, 1911; and it was re-published in the edition of 1930 (Appendix I, *infra*, pp. 27-28, 30-31).

C.—The Supreme Court of Puerto Rico has held that it was the purpose of the Legislature in enacting the Political Code to do nothing more than to "reproduce substantially the provisions of Articles 168 and 218 of the Mortgage Law" (*ante*, p. 18); which give the lien upon the "current unpaid annual assessment" as above quoted (*ante*, p. 11, and *infra*, pp. 27, 30).

²³ Mortgage Law: Art. 168, "the three annual assessments and the current unpaid annual assessment". Art. 218, "the last three annual assessments and the current unpaid annual assessment".

²⁴ Apparently the District Court did not have its attention fixed on this difference between the provisions of the different statutes. It mentions them as though they were all alike (No. 3771, R. 11; *ante*, pp. 7, 14).

D.—The usual understanding in relation to tax assessments is that the lien arises upon the completion of the making of the assessment. The reasons for this are set out by the insular Supreme Court in the cases already quoted,—the *Asociación de Maestros* case [*ante*, pp. 6, 18-19, and *infra*, Appendix II, pp. 36-39], followed in the *Roig* case, [*ante*, p. 6, and Appendix II, *infra*, pp. 40-41].

E.—Apparently it has been the general understanding among the insular officials that the tax lien arises immediately upon the making of the assessment. This understanding is reflected in the opinion of former Attorney General Beverley, in 1930, above quoted [*ante*, pp. 20-21], in which, without direct discussion of that point, he assumed that to be the rule, as the basis of his opinion of the personal liability of the person who was the owner on January 15, for the taxes.²⁵

F.—In view of all of the foregoing *indicia* it is believed that the rule as stated in the Mortgage Law and in the Civil Code,—rather than that stated in the Political Code,—is the rule which the Supreme Court of Puerto Rico will follow whenever the question comes before it for decision. That rule, clearly, is that the tax lien arises immediately

²⁵ This is the opinion to which the Supreme Court of Puerto Rico referred with approval in the case of *Asociación de Maestros v. Sancho Bonet, Treasurer*, *supra*, 54 Dec. P. R. 536, 541-542, above quoted (*ante*, pp. 18-19), the case in which the court called attention to the fact that (*ante*, p. 19).

“Although we have not been able to find any specific statutory provision nor any local decision concerning the moment at which for the first time there arises in this jurisdiction the responsibility for the payment of a tax on real property, the uniform decisions of various states of the Union have expressed a very definite criterion. The date on which the assessment of property for tax purposes becomes complete appears to be accepted by the majority as determining such responsibility.”

upon the making of the assessment. It is the more reasonable rule, and is the one in harmony both with the usual rules in other jurisdictions and with the reasoning of the Supreme Court of Puerto Rico in the *Asociación de Maestros* case above quoted (*ante*, pp. 18-19). It is accordingly the rule which is believed should be adopted by this court,—both in deference to local opinion, and also because it is plainly correct. [*Confer*, also, *ante*, p. 5, "Position of the People of Puerto Rico"].

POINT III

Errors in the opinion of the Circuit Court of Appeals.

A.—That opinion's apparent misunderstanding of the pertinent provisions of the Mortgage Law and the Civil Code has already been discussed (*ante*, pp. 14-17).

B.—It fails also to give sufficient weight,—[particularly in its quotation (Case No. 714, R. ~~25~~; Case No. 715, R. ~~19~~; 131 F. (2d) at p. 152) of one sentence picked out of the insular Supreme Court's excerpts from the opinion of the Nebraska Supreme Court in *Wood v. McCook Water-works Co.*, 97 Neb. 215, 149 N.W. 417, L.R.A. 1915C, 125],—to the insular Supreme Court's plain intimation that, whenever required directly to decide the question, it will agree with the insular Attorney General's opinion that the tax lien comes into existence immediately upon the completion of the assessment on January 15 in each year.

Taking the opinions of the insular Supreme Court as a whole, both in the *Asociación de Maestros* case and in the following *Roig* case [translations in full, Appendix II, *infra*, 32-39, 39-41], it is plain that the decision of the insular Court in both those cases was, simply, that the fact that there might also be a tax lien in existence on the property was no defense against the owner's personal liability for the taxes. In other words, that the two,—the tax lien and the owner's personal liability,—might co-exist simultaneously; that, as was held by the insular Attorney General

in his opinion of January 21, 1930, above quoted (*ante*, pp. 20-21), cited with approval by the insular Supreme Court in both those cases (Appendix II, *infra*, pp. 37, 31),—as the Attorney General phrased it (14 Ops. Atty. Gen. of P. R., *supra*, at p. 450; *ante*, p. 21):

“The Treasurer of Porto Rico, therefore, in a situation of that kind may proceed to collect the taxes *either from the former owner* to whom the taxes were assessed, *or may proceed against the security and sell the same.*”

CONCLUSION

The decision of the federal District Court was **wrong** in each of these cases, as was likewise that of the Circuit Court of Appeals affirming it. They were contrary to what the insular Supreme Court quite clearly would have decided, construing these insular laws. Certiorari should be granted for the reasons pointed out in the Petition (*ante*, pp. 7-9), and those decisions should be reversed and the cases remanded to the District Court with directions to pay the insular government the amounts of these tax claims.

Respectfully submitted,

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